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Trafficking in persons, especially women and children

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ezeilo, submitted in accordance with Human Rights Council resolution 17/1.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Summary

The present report is submitted to the General Assembly in accordance with Human Rights Council resolution 17/1 and covers the period from 1 August 2011 to 31 July 2012.

The report sets out activities undertaken by the Special Rapporteur during the period under review and contains a thematic analysis of the issue of human trafficking in supply chains, in which the Special Rapporteur examines the existing international legal framework and standards applicable to States and businesses, in addition to non-binding codes of conduct and principles adopted by businesses, as part of efforts to prevent and combat human trafficking. Recognizing that a multi-stakeholder approach is crucial in combating trafficking in supply chains, the Special Rapporteur discusses positive examples of public-private partnerships. Lastly, the Special Rapporteur offers conclusions and recommendations addressed to States and businesses.

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I. Introduction

1. The present report is the fourth submitted to the General Assembly by the current Special Rapporteur on trafficking in persons, especially women and children, pursuant to Human Rights Council resolution 17/1. It highlights her activities from 1 August 2011 to 31 July 2012. The main thematic focus of the report is human trafficking in supply chains and the responsibilities of States and businesses to combat it.

II. Activities of the Special Rapporteur

2. With regard to the activities carried out from 1 August 2011 to 29 February 2012, the Special Rapporteur refers to her report submitted to the Human Rights Council at its twentieth session (A/HRC/20/18). Her activities from 1 March 2012 to 31 July 2012 are briefly set out below.

A. Participation in events, conferences and consultations

3. On 3 April 2012, the Special Rapporteur participated in the General Assembly interactive dialogue on the theme "Fighting human trafficking: partnership and innovation to end violence against women and girls", convened by the President of the General Assembly in cooperation with the Group of Friends United against Human Trafficking and the United Nations Office on Drugs and Crime.

4. On 22 June, the Special Rapporteur presented her annual thematic report, on integrating a human rights-based approach to the administration of criminal justice in cases of trafficking in persons, to the Human Rights Council at its twentieth session (A/HRC/20/18). In conjunction with the presentation, she took part in two side events on 21 June, one on domestic servitude in diplomatic households and challenges for the international community, organized by the permanent missions of Austria and Switzerland to the United Nations Office and other international organizations in Geneva and the Organization for Security and Cooperation in Europe, and the other on the migration-trafficking nexus, drawing on casework on women domestic migrant workers from South Asia, organized by Anti-Slavery International, Franciscans International and the Global Alliance against Traffic in Women. On 22 June, the Special Rapporteur participated in a discussion on a human rights-based approach to prosecuting cases of human trafficking, organized by Anti-Slavery International, Christian Organisations against Trafficking in Women, Franciscans International and the Global Alliance against Traffic in Women. Lastly, on 25 June, she participated in a side event on the theme "Remedies for trafficking victims: civil society and law enforcement working together", organized by the permanent missions of Germany, the Philippines and the United States of America to the United Nations Office and other international organizations in Geneva.

5. On 11 July, the Special Rapporteur took part in a workshop on combating human trafficking during sporting events, held in London by the Qatar Foundation for Combating Human Trafficking and Stop the Traffik. She made a presentation on international perspectives on trafficking during past major sporting events.

B. Country visits

6. The Special Rapporteur visited the United Arab Emirates from 11 to 17 April and Gabon from 14 to 18 May, at the invitation of the Governments of those countries. Full reports on those visits will be presented to the Human Rights Council at its twenty-third session, in 2013.

III. Thematic analysis

A. Introduction

7. The thematic analysis set out herein deals with human trafficking in supply chains and the role of States, businesses and other stakeholders in preventing and combating it. In the discharge of her mandate, the Special Rapporteur has observed that trafficking in persons is in most cases committed by non-State actors and that businesses often derive economic benefits from labour or services provided by trafficked persons, whether directly or indirectly, including through their supply chains.

B. Trafficking in persons in supply chains

8. Human trafficking has been identified as a problem in various economic sectors, including those integrated into global markets. Companies face the threat of human trafficking at diverse levels, irrespective of their size, sector, operational context, ownership and structure (although these factors may influence the level of the threat). It has been reported that the economic sectors most exposed to human trafficking include agriculture and horticulture, construction, garments and textile, hospitality and catering, mining, logging and forestry, food processing and packaging, transportation, domestic service and other care and cleaning work.[1]

9. Businesses may be linked to human trafficking in various ways. They may be directly implicated in the crime of trafficking when they recruit, transport, harbour or receive persons for the purpose of exploitation during the course of their business. This may occur with or without the knowledge of the management or if the company has recruited the persons itself or through a third party, such as a private recruitment agency. For example, the construction industry has been linked to trafficking in this manner, exploiting internal or international migrants supplied through informal and clandestine recruitment systems.[2]

10. Businesses may also be implicated in trafficking when their premises, products or services are used by traffickers for that purpose. This may occur, for example, in the hospitality and catering sector, where hotels, restaurants and cafes may be used to provide sexual services by trafficked persons, and in the transport sector, where trafficked persons may be transported using the company's logistics and services.

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[1] United Nations Global Initiative to Fight Human Trafficking, "Human trafficking and business: good practices to prevent and combat human trafficking" (Vienna, 2010), pp. 17-18.

[2] See, for example, Human Rights Watch, *Are You Happy to Cheat Us? Exploitation of Migrant Construction Workers in Russia* (2009). Available from www.hrw.org/sites/default/files/reports/russia0209web_0.pdf.

Tourism is also a category of business in which there is a risk that businesses may be implicated in trafficking through this mode of operation, as in the case of sex tourism.

11. Furthermore, businesses may be indirectly associated with the crime of trafficking when their suppliers, subcontractors or business partners supply goods or services produced or provided by trafficked persons. This type of situation creates significant challenges for businesses, given that supply chains in today's global economy are often complex and may involve multiple layers of suppliers and subcontractors in various countries and regions, which hampers monitoring of the entire production process. In recent years, a growing number of companies, in particular those with complex global supply chains, have been increasingly faced with allegations of trafficking within their supply chains made by the media and civil society organizations. For example, global clothing companies have been accused of human trafficking and slavery through the use of subcontractors who exploited migrant workers in Asia, while chocolate and confectionary companies have been accused of benefiting from trafficked children who were forced to work under harsh conditions in cocoa farms in West Africa.[3] An international tobacco company has also been linked to allegations of trafficking and forced labour through the conduct of tobacco farm owners who supply tobacco to the company's subsidiary in Kazakhstan.[4] In the tobacco farms, children of migrant workers were reportedly employed under harsh conditions considered to be the worst forms of child labour and some employers allegedly confiscated migrant workers' passports, did not pay regular wages, cheated them of earnings and forced them to work excessively long hours. While the international company had no direct contractual relationship with the tobacco farm owners, it has nevertheless found it difficult to disassociate itself from the allegations in the light of the significant economic benefits that it ultimately derives from such conduct.

C. State obligations to prevent and combat human trafficking in supply chains

1. International and regional instruments

12. As a fundamental starting point, States have an obligation under international human rights law to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises. This duty is an important framework because States may encounter human trafficking in supply chains in various ways. A given State may be a State in which the company's supplier or subcontractor is based, or a home State in which the company is based or incorporated. Where the supplier or subcontractor is directly implicated in trafficking or the company is indirectly linked to trafficking through the conduct of the supplier or subcontractor, a State's obligation to protect human rights implies that the State in which the supplier or subcontractor is based has the primary responsibility to hold that supplier or subcontractor accountable.

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[3] See the case studies at the Human Rights and Business Dilemmas Forum, available from http://human-rights.unglobalcompact.org/dilemmas/human-trafficking.

[4] Human Rights Watch, *"Hellish Work": Exploitation of Migrant Tobacco Workers in Kazakhstan* (2010). Available from www.hrw.org/sites/default/files/reports/kazakhstan0710webwcover_1.pdf.

13. The obligations of States to prevent and combat human trafficking are clearly spelled out in international human rights instruments. The Convention on the Elimination of All Forms of Discrimination against Women requires States parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women (art. 6), while the Convention on the Rights of the Child similarly obliges States parties to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (art. 35). It is also of relevance that the International Covenant on Civil and Political Rights prohibits slavery and forced or compulsory labour (art. 8). Other relevant international instruments include those under the auspices of the International Labour Organization (ILO): the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182), under which States parties are called upon to take effective measures to prohibit the worst forms of child labour, including child trafficking, and the Convention concerning Forced or Compulsory Labour (Convention No. 29) and the Convention concerning the Abolition of Forced Labour (Convention No. 105), under which States parties are required to take measures to abolish forced or compulsory labour.

14. In addition, under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000, States parties are required to adopt such legislative and other measures as may be necessary to establish trafficking in persons as a criminal offence (art. 5). In addition, States parties are to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons (art. 9 (1) (a)). This obligation to criminalize the conduct of trafficking entails a broad range of other related obligations, such as that to effectively investigate, prosecute and adjudicate trafficking and to punish individuals and legal persons found guilty of trafficking by imposing effective and proportionate sanctions, as set out in the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1, principles 13 and 15).

15. Regional instruments also provide for State obligations to prevent and combat trafficking in persons. Perhaps the most comprehensive regional instrument is the Council of Europe Convention on Action against Trafficking in Human Beings, under which States parties are required not only to adopt legislative or other measures to criminalize trafficking in persons but also to ensure that a legal person can be held liable for trafficking and other related acts (art. 22). Also relevant to the issue of trafficking in supply chains is article 19, under which States parties are required to consider adopting such legislative or other measures to criminalize the use of services which are the object of exploitation, with the knowledge that the person is a victim of trafficking in human beings. In the Arab region, the Arab Charter on Human Rights prohibits all forms of trafficking in human beings (art. 10). In other regions, while there is a tendency to prohibit only some forms of trafficking in persons, it is nevertheless relevant to note that the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, in its article 4 (2) (g), and the African Charter on the Rights and Welfare of the Child, in its article 29, require States parties to take appropriate measures to prevent trafficking in women and in children, respectively. In the Americas, the American Convention on Human Rights prohibits trafficking in women (art. 6 (1)).

2. National laws

16. The obligations of States to prevent and combat trafficking in persons under international law translate into obligations at the national level to adopt and enforce appropriate legislative or other measures aimed at achieving that objective. Today, a significant majority of States have criminalized trafficking in persons by enacting comprehensive anti-trafficking legislation (see A/HRC/20/18, paras. 19-21). The effective enforcement of that legislation, however, remains a challenge in many States. Even those States with strong anti-trafficking measures are sometimes described as safe havens because they do not enforce their own laws (see ibid., para. 22). For example, the enactment of comprehensive anti-trafficking legislation notwithstanding, the investigation and prosecution of perpetrators may be hampered by such factors as misidentification of trafficked persons, corruption, lack of capacity and resources on the part of law enforcement agencies and slow court procedures.

17. In this regard, while in no way negating the importance of criminalizing human trafficking and enforcing the law, other related areas of national laws, such as labour and immigration laws, are equally crucial in seeking to eliminate factors that increase the risks of trafficking in persons, in particular in the context of supply chains.

18. Labour laws are a powerful tool to prevent and combat trafficking in supply chains, given that matters regulated thereunder, such as recruitment and employment of workers, wages and working conditions, may serve as operational indicators of trafficking. For example, deception about the nature of the job, location or employer may strongly indicate that the worker in question has been trafficked.[5] Victims of trafficking in persons are often recruited and promised prosperous employment opportunities by unscrupulous recruitment agencies or labour brokers, only to end up in situations of exploitation after recruitment. Excessive working hours and debt bondage are other strong indicators of trafficking in persons[5] and the Special Rapporteur has documented numerous cases in which trafficked persons were forced to work for more than 12 hours a day with very little pay in various sectors, typically including agriculture, food processing and garments and textile (see, for example, A/HRC/20/18/Add.2, paras. 9-12). Many States have in place, recently adopted or amended labour laws, requiring the registration of recruitment agencies and labour brokers,[6] setting a minimum wage, placing a cap on the number of working hours, providing for breaks and holiday periods and prescribing occupational health and safety standards. While it is beyond the scope of the present report to scrutinize States' labour laws, the weak enforcement of those laws, rather than their provisions, often gives rise to risks of trafficking in many States. The Special Rapporteur has observed during past official visits that labour inspectors are

[5] See ILO, "Operational indicators of trafficking in human beings: results from a Delphi survey implemented by the ILO and the European Commission" (March 2009). Available from www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_105023.pdf.

[6] For example, in Guatemala, the Labour Code requires that "employer representatives" dedicated to recruiting peasant workers must have legal authorization and power of attorney from the employer authorizing them to recruit workers. The employer representatives may carry out recruitment activities only upon approval by the Labour Inspectorate. In the Czech Republic, the Employment Act was amended to require labour brokers to be insured, pass a criminal record check and report statistics on the number and nationality of workers placed in employment.

often not well-equipped in terms of resources and capacity to conduct inspections to detect violations of labour laws, including in cases of trafficking for the purpose of labour exploitation (see, for example, A/HRC/14/32/Add.4, A/HRC/17/35/Add.2 and A/HRC/20/18/Add.2). There are encouraging signs, however, that some States are progressively strengthening the capacity of labour inspectors to prevent labour exploitation. For example, in Argentina, the authorities reportedly launched a more rigorous labour inspection programme in January 2011[7] and increased the number of labour inspectors to 400 throughout the country, targeting rural areas in particular.[8] The Special Rapporteur commends this positive development, given that it was reported at the time of her official visit to Argentina that the labour inspection programme was ineffective and investigations into forced labour cases rarely carried out (see A/HRC/17/35/Add.4, para. 18). In Brazil, mobile inspection teams, comprising labour inspectors, labour prosecutors and federal police officers, investigate complaints of slave labour, rescue victims and impose fines on employers in breach of labour laws. Since 1995, more than 39,000 workers have reportedly been rescued.[9]

19. Immigration laws could also contribute to preventing migrant workers from being trafficked into supply chains. Increasing opportunities for legal, gainful and non-exploitative labour migration is a measure that States may take to prevent trafficking in persons (E/2002/68/Add.1, guideline 7, para. 7). In fact, a lower incidence of trafficking is reported where opportunities for regular migration are available within a multilateral framework or under a bilateral agreement between the sending and receiving States, or where there are otherwise established channels of migration (see A/65/288, para. 42). For example, the Protocol Relating to Free Movement of Persons, Residence and Establishment concluded under the auspices of the Economic Community of West African States, mandates the abolition of visa and entry permits for Community citizens, giving them greater freedom of movement between member States. While the implementation of the Protocol has reportedly been limited and it is difficult to assess its impact in preventing trafficking in persons, it nevertheless stands as an example of a framework that could encourage the regularization of population movements and hence decrease the risk of trafficking.

20. In addition to anti-trafficking laws and other related laws that are aimed at punishing perpetrators of human trafficking in general, some States have adopted creative laws and mechanisms directed at businesses to better monitor their conduct. In Brazil, the Ministry of Labour and Employment maintains a public record of individuals and corporations identified by labour inspectors to be using or to have used slave labour. Once placed on what is known as the "dirty list", the individuals and corporations face financial sanctions, including fines and denial of national subsidies, tax exemptions and loans from State banks. They also automatically have their business dealings suspended by other companies that have voluntarily signed the National Pact for the Eradication of Slave Labour. The Ministry of National Integration has formally recommended that private-sector lenders deny financing to

[7] United States, Department of State, *Trafficking in Persons Report 2011*. Available from www.state.gov/j/tip/rls/tiprpt/2011.

[8] See www.trabajo.gov.ar/inspeccion.

[9] See www.ungift.org/knowledgehub/en/stories/oct2011/ilo-webinar_-eradicating-forced-labour-from-global-supply-chains.html.

those on the list.[9] The list currently contains the names of almost 300 employers.[10] It is updated biannually and those listed may be removed only if they have not repeated the offence and have paid all fines and labour and social compensation. The list is a good example of how States may name and shame the companies implicated in human trafficking and slavery, and sanction their behaviour.

21. Other States have established national certification or labelling systems integrating measures to combat trafficking and forced labour. In Argentina, for example, the National Institute of Industrial Technology recently established a comprehensive national certification system for companies in the textile industry, whereby it offers a certificate of quality to firms that refrain from using forced labour and provide their employees with decent working conditions and social security coverage. The certified companies are eligible to bid on State textile contracts, such as for military uniforms.[11] In a similar vein, in the Plurinational State of Bolivia, the Bolivian Institute of Foreign Trade, in coordination with the Ministry of Labour, Employment and Social Security, awards a triple seal, or certification, to companies that have demonstrated the prohibition of child labour, forced labour and discrimination throughout the production chain.

22. Furthermore, the exposure of risks of human trafficking in supply chains has led to the introduction of laws in some home States requiring disclosure of specific information to scrutinize the efforts of the private sector in preventing and combating human trafficking. In the United States, the California Transparency in Supply Chains Act, which came into effect on 1 January 2012, requires every retailer and manufacturer with annual worldwide revenues in excess of $100 million to disclose on its website information about its efforts to eradicate slavery and human trafficking from its direct supply chain (sect. 3 (a) (1)). The disclosure must include information about the extent to which the seller or manufacturer engages in verification of product supply chains, conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains, requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business, maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking, and provides company employees and management with training on human trafficking and slavery (sect. 3 (c)). Failure to disclose this information by 30 November 2012 may result in legal actions brought by the Attorney General of California.

23. Several companies have already made the required disclosures, which significantly vary in attitude and detail.[12] Some have made disclosures detailing the initiatives that they have taken to address human trafficking in their supply chains, while others simply mimic the language of the Act to affirm that they are implementing the measures suggested therein without giving details as to how they have done so. Some companies even indicate that they have taken no steps to address human trafficking in their supply chains. As the Act does not require the

[10] See www.reporterbrasil.org.br/listasuja.

[11] United States, Department of State, *Trafficking in Persons Report 2009*. Available from www.state.gov/g/tip/rls/tiprpt/2009/123135.htm.

[12] Jonathan Todres, "The private sector's pivotal role in combating human trafficking", *California Law Review Circuit*, vol. 3 (2012), p. 95.

actual implementation of the measures specified therein but rather disclosures as to the extent to which companies are implementing such measures, companies can still be in compliance with the Act by merely stating that they are not taking any action to address human trafficking and slavery. Accordingly, the effectiveness of the Act will hinge upon the extent to which advocates and investors strategically use the disclosures to affect the companies' brand image and consumer opinion. Nevertheless, the Act represents an innovative initiative by which States may contribute to regulating corporate behaviour in efforts to eradicate human trafficking in supply chains.

D. Corporate responsibilities to prevent and combat human trafficking in supply chains

24. While international law is primarily addressed to States, it is clearly recognized that powerful non-State actors such as corporations have responsibilities to respect human rights. Indeed, the preamble of the Universal Declaration of Human Rights explicitly states that the responsibility is one for every individual and every organ of society, indicating that respect for human rights is a shared responsibility of States and non-State actors. Since the 1970s, a number of intergovernmental organizations have formulated voluntary guidelines, declarations and codes of conduct aimed at regulating corporate activities.[13] The discussion has intensified over the past decade or so, culminating in the development of further non-binding instruments directed at businesses to ensure greater respect for human rights. One of the earlier examples is the Global Compact, which encourages businesses to align their operations and strategies with 10 universally accepted principles in the areas of human rights, labour, environment and anti-corruption. While it does not specifically refer to trafficking in persons, it does call for the elimination of all forms of forced and compulsory labour and child labour, in addition to the elimination of discrimination in respect of employment and occupation. The Global Compact seeks to bring corporate actors into the arena of human rights and, since its launch in July 2000, more than 8,700 companies in 130 countries have signed up to it. Concerns have been expressed, however, that the entry process is not sufficiently selective or conducive to high-quality participation and that there is no adequate and effective monitoring and verification of implementation by the participants.

25. More recently, in July 2011, the Human Rights Council endorsed the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex). The Guiding Principles have three pillars: protect, respect and remedy. The first pillar is the State duty to protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises (principle 1). The second pillar is the corporate responsibility to respect human rights, which means that business enterprises should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved (principle 11). The third pillar is the State duty to ensure that, when human rights abuses occur within their

[13] For example, the 1976 Guidelines for Multinational Enterprises developed by the Organization for Economic Cooperation and Development and the 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy developed by ILO.

territory and/or jurisdiction, those affected have access to effective remedy (principle 25).

26. The business responsibility to respect human rights requires that businesses not only avoid causing or contributing to adverse human rights impacts through their own activities, but also seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts (principle 13). To meet this responsibility, businesses are encouraged to have in place appropriate policies and processes, including a policy commitment to respect human rights, a human rights due-diligence process and processes to enable the remediation of any adverse human rights impacts that they cause or to which they contribute (principle 15). The Guiding Principles acknowledge that, where the adverse human rights impact is directly linked to the business operations, products or services by its business relationship with another entity, it is more complex to delineate the content of the responsibility to respect human rights, and what constitutes appropriate action may vary according to the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the abuse and whether terminating the relationship with the entity itself would have adverse human rights consequences (principle 19).

27. In addition to these non-binding international frameworks, numerous initiatives led by civil society organizations urge greater compliance with international human rights standards by businesses. Such initiatives may include voluntary codes of conduct or ethical principles for businesses.[14] There are also many examples of industry-wide or individual codes of conduct or principles voluntarily developed and adopted by businesses themselves to pledge their commitment to human rights as part of their corporate social responsibility policies and programmes. While most existing codes of conduct or initiatives do not specifically include human trafficking as a priority issue to be scrutinized, they typically seek to eliminate the worst forms of child labour and ensure respect for labour rights. Thus, if properly implemented and monitored, they could significantly contribute to preventing trafficking in persons in supply chains in the first place.

28. The existence of these frameworks notwithstanding, many businesses continue not to recognize human trafficking as a serious and relevant risk in their operations. While, as discussed below, some companies have begun taking initiatives to prevent and combat trafficking, existing corporate social responsibility programmes often do not treat human trafficking as a priority issue and lack specific policies or programmes to ensure that their supply chains are free of trafficked labour. Although most companies are aware of human trafficking and find it morally unacceptable, the connection between human trafficking and business is still not well understood.[15]

29. Businesses cannot, and should not, shy away from the issue of human trafficking, not only because it amounts to human rights violations and is a criminal offence in most States, but also because it creates reputational and financial risks to their operations. First, allegations of human trafficking can pose serious threats to brand value and company reputation, in particular for companies producing

[14] One example is the Ethical Trading Initiative Base Code (www.ethicaltrade.org).

[15] United Nations Global Initiative to Fight Human Trafficking, "Human trafficking: everybody's business". Available from www.ungift.org/docs/ungift/pdf/reports/Story_Survey.pdf.

consumer goods. Once a company's image has been tarnished, it is often difficult to reverse that damage. This may affect consumer demand and existing and future business partnerships, resulting in a loss of contracts and/or future business opportunities. Second, allegations of human trafficking may also threaten investor relations and risk divestment on the part of both ethical and mainstream investors. Furthermore, as seen in the example of the "dirty list" in Brazil, public authorities increasingly link the financial support that they provide to businesses with proven ethical performance.

30. On the other side of the coin, there are positive incentives for businesses to contribute to efforts to combat human trafficking. By taking an active role in preventing and combating trafficking, companies can enhance their brand image and reputation among consumers, investors and other influential stakeholders. Their investment of resources in local communities to mitigate factors that place them at risk of trafficking, such as lack of access to education and employment opportunities, may also strengthen the relationship with local stakeholders and generate positive effects in the long term by producing a better-skilled and better-educated local workforce.

31. Furthermore, businesses are well positioned to contribute to efforts to combat human trafficking because of the level of resources and influence that they can leverage. Some major companies, in particular multinational corporations, are often larger economies than many developing States and can exert enormous political, economic and social influence over the States in which their suppliers or subcontractors may be based.

32. With the growing recognition that the private sector can contribute to preventing and combating trafficking, voluntary codes of conduct on human trafficking specifically targeting corporations have been developed. One notable example is the Athens Ethical Principles[16] and the accompanying Luxor Implementation Guidelines.[17] Adopted by participating business representatives in 2006, there are seven core principles, including demonstrating zero tolerance towards human trafficking and encouraging business partners, including suppliers, to apply ethical principles against human trafficking. The Luxor Implementation Guidelines were subsequently adopted in December 2010 to aid the implementation of the core principles.

33. Recognizing that there are great risks of human trafficking in supply chains, the Luxor Implementation Guidelines provide practical measures that companies must take to minimize those risks, including publicly posting recruitment procedures throughout the company's supply chain or chains, mapping the supply chain or chains so that there is a system to trace commodities to raw materials, having highest-risk suppliers become certified by external auditors or agree to unannounced audits against the company's code of conduct, and developing training modules for all employees in the company's supply chain or chains on the basics of human trafficking and how to recognize and report it.

34. Furthermore, perhaps owing to some extent to the effect of information-forcing legislation such as the California Transparency in Supply Chains Act

[16] See www.ungift.org/docs/ungift/pdf/Athens_principles.pdf.

[17] See www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/Luxor_Implementation_Guidelines_Ethical_Principles.pdf.

discussed above, some industries and companies have adopted codes of conduct or principles specifically focusing on human trafficking[18] or have expressly integrated their commitment to addressing human trafficking into their existing codes of conduct.[19] The business commitment to the issue of human trafficking to date has often been expressed in the areas of prevention and protection, with the former focusing on activities such as awareness-raising, capacity-building of staff, communications and media campaigns, and the latter including measures to protect or correct wrongs suffered by trafficked persons and supporting the recovery and reintegration of trafficked persons in the long term.

35. While these are positive and encouraging developments, significant challenges lie ahead in achieving a measurable and sustainable impact in terms of preventing human trafficking through the application of these voluntary codes of conduct and initiatives. These codes of conduct or statements vary greatly in substance by company. One company may make a brief, general statement to the effect that it is committed to combating human trafficking, while another may have a comprehensive policy detailing the steps to be taken to prevent human trafficking. In fact, research reveals that unilateral corporate social responsibility norms, compared with negotiated agreements, are often more limited and precise in scope and content, resulting in very little impact.[20]

36. That those codes are of a voluntary and self-regulating nature also often leads to criticism that they are toothless and effectively unenforceable. While some companies have adopted robust strategies involving a verification and certification system by an independent social auditor,[21] the effective and independent monitoring of the implementation of codes of conduct is not institutionalized in most companies. For example, it has been reported that the Protocol for the Growing and Processing of Cocoa Beans and Their Derivative Products in a Manner that Complies with ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Harkin-Engel Protocol), which was signed by chocolate and cocoa industry representatives, has not been implemented effectively, partly owing to the fact that implementation is not supported by independent product certification.[22] Auditors monitoring companies' supply chains may also not be adequately trained in the issue of human trafficking

[18] Examples include the statement by Intel on human trafficking and slavery, available from www.intel.com/content/dam/www/public/us/en/documents/corporate-information/policy-human-trafficking-and-slavery.pdf; the statement by LexisNexis, available from www.lexisnexis.com/en-us/about-us/rule-of-law.page#Combating%20Human%20Trafficking; and the Code of Business Conduct and Ethics of the Manpower Group, available from http://files.shareholder.com/downloads/MAN/1992509938x0x486756/ccede15d-8523-49fe-8866-a69d5f861a71/MAN_code_business_conduct_ethics_0711.pdf.

[19] Examples include the codes of conduct of the Electronic Industry Citizenship Coalition, available from www.eicc.info/documents/EICCCodeofConductEnglish.pdf, and of Ciett, available from www.ciett.org/fileadmin/templates/ciett/docs/CIETT_Code_Conduct.pdf.

[20] ILO, "Governance, international law and corporate social responsibility", Research Series of the International Institute for Labour Studies No. 116 (Geneva, ILO, 2008), p. 67. Available from www.ilo.org/public/english/bureau/inst/download/116.pdf.

[21] The Manpower Group, for example, has adopted an ethical framework for cross-border labour recruitment.

[22] See Tulane University, "Oversight of public and private initiatives to eliminate the worst forms of child labor in the cocoa sector in Côte d'Ivoire and Ghana", 31 March 2011. Available from www.childlabor-payson.org/Tulane%20Final%20Report.pdf.

and may report only specific labour law violations such as delayed payment of wages or long working hours, without making the necessary connection with possible situations of trafficking.[23]

37. Furthermore, where the supply chain concerned is extensive and complex, involving a number of small or medium-sized enterprises or informal industries, it becomes increasingly challenging in practice to ensure that these instruments reach every entity involved in the entire production chain. Such small or medium-sized enterprises or informal industries, in which trafficked persons may commonly be employed, may also be less concerned about the reputational risk, according priority to profits over the protection of human rights. For example, a global clothing company discovered that one of its vendors in India had subcontracted an order to an unauthorized subcontractor where children were forced to work long hours for little pay without the company's knowledge or approval and in violation of its code of vendor conduct.[24] This illustrates the need to conduct a risk assessment to identify the risks of human trafficking at all levels of the production chain and rigorously monitor the implementation of anti-trafficking policies by suppliers.

38. For a voluntary code of conduct or initiative to be effective in preventing human trafficking in supply chains, it is not sufficient for it to simply state a commitment to combating human trafficking. It should, at a minimum, provide for the undertaking of a risk assessment to map out all actors involved in the supply chain and identify where the risks of human trafficking may be present. This should be followed by the development and implementation of a high-level, company-wide policy prohibiting trafficking and trafficking-related acts at all levels of the supply chain. The implementation of the policy by all suppliers should be monitored and assessed by social auditors who are properly trained in the issue of human trafficking. The policy should also contain a set of remedial measures that a company should take if trafficking cases are found in supply chains, such as referral to victim support agencies and ensuring victims' access to grievance mechanisms. In developing corporate strategies to prevent and combat trafficking in supply chains, businesses should also consult and cooperate with civil society organizations with expertise in trafficking issues.

E. Role of other stakeholders

39. As the bottom line is the primary interest of businesses, other stakeholders, most notably consumers, can exert significant influence over corporate conduct. There is no doubt that consumers are increasingly conscious of how their everyday products are produced and take into consideration a company's commitment to social issues in deciding where to shop.[25] Through ethical consumerism, consumers could play an instrumental role in encouraging companies to take part in efforts to combat trafficking.

40. Creative campaigns enable consumers to make informed decisions about the products that they buy and to ensure that they are free of trafficked labour. For

[23] See www.antislavery.org/english/what_we_do/working_with_business/monitoring_forced_labour.aspx.

[24] See http://human-rights.unglobalcompact.org/dilemmas/human-trafficking.

[25] Daniel Stokes, "Consumers and fair trade: lessons from a decade of dramatic growth and growing impact", 2012. Available from www.gwu.edu/~iiep/assets/docs/fair_trade_stokes.pdf.

example, the "Buy Responsibly" campaign, launched by the International Organization for Migration, uses various media to raise public awareness of the fact that products purchased regularly may be made using trafficked or exploited labour and provides practical information about how consumers may make informed choices in purchasing products.[26] Not for Sale, a non-governmental organization, also strategically uses various media to educate consumers about how their products are made. For example, it has launched an interactive online survey about consumer lifestyles to find out the number of slaves who probably would have been involved in sourcing and producing the products that the respondent owns and uses every day.[27] It also runs the "Free2Work" campaign, which provides consumers with ratings on the basis of a brand's trafficking-related policies, transparency, monitoring and worker rights.[28]

41. Other consumer-targeted initiatives include product certification and labelling, which indicate that the production of a specific item meets human rights, labour and/or environmental standards. While existing examples of such initiatives do not specifically incorporate the prohibition of trafficking in persons,[29] they could contribute to preventing trafficking in supply chains by urging companies to meet human rights and labour standards.

42. Insofar as many businesses are conscious of protecting their brand image and reputations, the media also has great potential to positively contribute to preventing and combating trafficking in supply chains. Through investigative journalism, the media can publicly name and shame States and/or companies directly linked to trafficking and increase public awareness of the issue. They can also garner public support for anti-trafficking efforts, acting as a catalyst for change. The increased attention to the issue of trafficking in supply chains partly stems from reporting by high-profile international media, such as Al-Jazeera, BBC, CNN and *The Guardian*. The media can, however, also negatively contribute to the issue of trafficking. Concerns have been expressed that the media tend to sensationalize stories of trafficked persons, in particular victims of sex trafficking, and highlight their "victimhood" rather than educating the public about the underlying social and economic factors that led to the violation of their human rights (see A/65/288, para. 48).

F. Multi-stakeholder approach

43. The above analysis attests that, to address human trafficking in supply chains effectively, a multi-stakeholder approach is warranted. Human trafficking in supply chains not only involves States' failure to prevent trafficking through legislative or other measures, but also companies' failure to refrain from using trafficked labour or to prevent trafficking committed by its partners. The roles of consumers and the media are also significant, given that they are able to shape corporate behaviour by affecting companies' bottom line. The solution to the problem of human trafficking in supply chains lies beyond the reach of any single stakeholder, whether State or company. To address risks of trafficking in supply chains in an effective and

[26] See www.buyresponsibly.org/index.php.

[27] See www.slaverymap.org.

[28] See www.free2work.org.

[29] Examples include Fairtrade (www.fairtrade.net) and GoodWeave (www.goodweave.org).

sustainable manner, a broad vision and strategy based on cooperation and partnership among all relevant actors are crucial.

44. In this regard, there are some promising examples of public-private partnerships in preventing trafficking. Parallel to the "dirty list" mentioned above, the Government of Brazil supported the development of a national pact to eradicate slave labour, a multi-stakeholder initiative involving business, financial institutions, non-governmental organizations, trade unions and ILO. The Pact currently has more than 180 company and associated signatories, including large supermarket chains, such as Walmart and Carrefour, and industrial and financial groups. Under the Pact, a social observatory institute monitors the performance of signatories and documents existing and emerging good practice.[30]

45. There are other positive multi-stakeholder initiatives led by international organizations. For example, the International Organization for Migration has successfully supported and promoted public-private partnerships in India, engaging the private sector, the Government and non-governmental organizations. The partnerships focused on creating economic enterprises and providing employment opportunities to tackle the root causes of trafficking and irregular migration, such as poverty and lack of educational and livelihood opportunities, and to assist the victims of trafficking in recovery. They have reached out to more than 600 survivors, involved 20 corporations and 20 non-governmental organizations and garnered the support of local governments and law enforcement agencies. They have successfully led to the establishment of economic enterprises that provided employment opportunities for trafficked persons, including a mechanized laundry unit in Goa known as "Swift Wash", supported by various companies and the Goa Chamber of Commerce and Industry.[31]

46. ILO has a global programme targeting children exploited in the mining and quarrying sector, "Minors out of Mining". It is led by the Governments of 15 countries (Brazil, Burkina Faso, Colombia, Côte d'Ivoire, Ecuador, Ghana, Mali, Mongolia, Nicaragua, Pakistan, Peru, Philippines, Senegal, Togo and United Republic of Tanzania) and supported by partners in the mining industry, such as the International Federation of Chemical, Energy, Mine and General Workers' Unions, the International Council on Mining and Metals and Communities and Small-Scale Mining. The programme focuses on increasing educational and vocational training opportunities for children and reportedly has had successes in stopping children working in mines in many countries, such as Mongolia and the Philippines (see A/HRC/18/30, para. 84).

47. In some cases, companies themselves have taken a leadership role in developing and implementing multi-stakeholder initiatives. For instance, when the global clothing company, Gap Inc., discovered that its subcontractor in India was employing children under slave-like conditions, it not only swiftly remedied the situation but also contributed to the establishment of a multi-stakeholder think tank in India in July 2008 to promote public-private partnerships in efforts to combat trafficking. The company has teamed up with its local suppliers, a Government-

[30] ILO, *Combating Forced Labour: A Handbook for Employers and Business* (Geneva, 2008).

[31] "Human trafficking and business" (see sect. III, footnote 1). Additional information can be found in United Nations Office on Drugs and Crime Regional Office for South Asia, *Compendium of Best Practices on Anti-Human Trafficking by Non-Governmental Organizations* (New Delhi, 2008).

supported non-governmental organization and a national buying house, to help more than 600 women learn hand embroidery skills to obtain work in the export market.

IV. Conclusions and recommendations

48. **In today's globalized world, the risks of human trafficking in supply chains are significant throughout economic sectors and affect all States, whether as a source, transit or destination country. These risks, however, have not been adequately dealt with, either by States or by businesses themselves. States have the primary obligation to prevent and combat trafficking in persons under international law by enacting and enforcing legislation criminalizing trafficking and imposing proportionate punishments on perpetrators. While this obligation applies equally to all States, the emphasis is laid on those States in which suppliers or subcontractors in the production chain are based, given that they are responsible for protecting individuals within their territory and subject to their jurisdiction from the risk of trafficking. This does not absolve businesses of the responsibility to prevent and combat trafficking in persons. There is wide international consensus that businesses have responsibilities to respect human rights and they are uniquely positioned to prevent or mitigate any risks of trafficking in their supply chains. In fact, as discussed above, reasons abound as to why they should take the issue of human trafficking seriously from a risk management perspective. Other stakeholders, such as consumers and the media, also have a role to play in influencing corporate behaviour. To effectively tackle trafficking in persons in supply chains, there is a need for a multifaceted and multi-stakeholder approach, engaging all relevant actors and encompassing various strategies to pressure States and companies to live up to their obligations.**

49. ***On the basis of these conclusions, the Special Rapporteur*** **recommends that States:**

(a) **Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, and other relevant international instruments prohibiting trafficking in persons and, on that basis, adopt comprehensive laws to effectively prosecute and punish perpetrators of trafficking and trafficking-related crimes, or amend existing anti-trafficking legislation to ensure that it meets international standards;**

(b) **Ensure the effective enforcement of relevant laws by, among other things, intensifying capacity-building and training for all relevant stakeholders, including the police, immigration authorities, border patrol officials, labour inspectors, judges and prosecutors;**

(c) **Strengthen the enforcement of labour laws and, in particular, specifically mandate and train labour inspectors to identify victims of trafficking during labour inspections, in addition to allocating resources to labour inspectors so that they have the capacity to inspect small or informal establishments where trafficked persons are likely to be employed;**

(d) Create opportunities for regular labour migration and actively seek to adopt bilateral and multilateral agreements in that regard, in particular for low-skilled and semi-skilled labour;

(e) Consider strengthening businesses' compliance with laws by adopting initiatives that allow the naming and shaming of those businesses that engage in trafficking and applying financial penalties to such businesses;

(f) Develop laws, programmes and initiatives that motivate businesses to proactively comply with their responsibility to prevent and combat trafficking in persons, such as tax incentives, product certification and labelling;

(g) Consider adopting laws that facilitate consumer pressure by requiring public disclosure of information about measures that companies have taken to prevent and combat human trafficking in supply chains;

(h) Provide training to media representatives so that they disseminate accurate information about trafficking in supply chains and use appropriate language in reporting;

(i) Promote public-private partnerships and engage the business community and civil society in developing and implementing sustainable initiatives to prevent and combat human trafficking in supply chains, in addition to actively involving trafficked persons in designing, implementing and monitoring such initiatives.

50. **Furthermore, businesses should:**

(a) Become signatories to the Global Compact and the Athens Ethical Principles, which underscore the importance of respect for human rights by businesses and their participation in efforts to combat the menace of human trafficking in all its forms, especially in the production chain, in addition to committing themselves to abiding by the Guiding Principles on Business and Human Rights and other similar instruments;

(b) Conduct a risk assessment for their entire production chain and, on that basis, develop and adopt high-level, company-wide policies or strategies to eliminate risks of human trafficking in their supply chains that should apply to all enterprises in a company's product or supply chain and should be integrated into contracts and agreements with suppliers and business partners;

(c) Raise the awareness of human resources, compliance and other relevant staff of the risks of human trafficking and train them in the company's anti-trafficking policies so that they are able to identify trafficking cases and take remedial measures;

(d) Implement an effective monitoring system, such as social audits, to scrutinize the risks of human trafficking at all levels of the supply chain;

(e) In cases in which human trafficking is discovered in the supply chain, cooperate with victim service providers to ensure that trafficked workers receive the necessary assistance and contribute to programmes that assist victims, such as vocational training;

(f) Establish effective, credible and confidential grievance mechanisms to enable workers to voice concerns and promote an institutionalized mechanism for resolving workplace conflict;

(g) Communicate regularly with stakeholders, including investors, on company policies, programmes, performance and impact with regard to efforts to combat human trafficking;

(h) Cooperate with civil society organizations with experience and expertise in working with trafficked persons and consult them in developing policies or programmes to prevent trafficking in supply chains;

(i) Pursue anti-trafficking agreements, policies and dialogue with other relevant stakeholders such as industry and business peers and trade unions.